IN THE HIGH COURT OF BOMBAY AT GOA.

APPLICATION FOR APPOINTMENT OF ARBITRATOR NO. 5 OF 2004.

Shri Vinod Kumar Sharma,
r/at EC-78, 303, Krishna
Keshu, Evershine City,
Vasai Road, East, Thane,
Mumbai. ... Applicant.

Versus

1. Mrs. Tereza Dinesh Vaghela,
   Ground Floor, Shalom Co-op.
   Housing Society, Alto
   Porvorim, Goa.
2. Mrs. Maria Fernandes,
   Trilok Darshan, Alto
   Porvorim, Goa. ... Respondents.

Mr. S.N. Joshi, Advocate for the Applicant.

Mr. S.G. Dessai, Senior Advocate with Mr. B. Prabhu Dessai, Advocate for the Respondents.

Coram : S.A. BOBDE, J.

Date : 11th June 2004.

ORAL ORDER.

This is an application for appointment of an Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996. The applicant has sought a resolution of the dispute between him and the respondents/other partners, inter alia, in respect of (a) two flats belonging to the partnership firm, which have not been sold and which are required to be sold and (b) the filing of a civil suit for recovery of the said amount from one Dinesh Vaghela, who is said to be the husband of one of the partners.

2. Mr. Dessai, the learned counsel for the respondents, opposed the application on the ground that

there is no failure within the meaning of Sub-Sections (4) and (6) of Section 11 of the Arbitration and Conciliation Act, 1996, in view of the fact that there is already an earlier award. Admittedly however, though the accounts of the entire partnership were before the Arbitrator and were disputes raised earlier, the Award does not cover the differences between the partners as to these two aspects mentioned above and other aspects now agitated. Mr. Dessai contended that all disputes upto the year 1998 have been resolved. The learned counsel also opposed the appointment of Arbitrator on the ground that the dispute sought to be raised is not between partners only but is between partners and a third person and, therefore, not covered by the arbitration clause. The arbitration clause reads as follows:-

> "15. Any dispute or difference which may arise between the Partners or their representatives with regard to the construction meaning and effects of this Deed or any part thereof or respecting the account profit or losses of the business or rights and liabilities of the parties under this Deed or any of the matter relating to the firm shall be referred to arbitration under the provisions of Indian Arbitration Act, 1940 or any statutory modification thereof for the time being in force."

It is clear that the clause contemplates the resolution of a dispute between the partners or their representatives with regard, inter alia, to any matter

relating to the firm. I am of the view that the present dispute raised by the applicant is a dispute between the partners, eventhough it involves transactions with third person. As regards paragraph 3 of the Notice, dated 2nd February 2002, sent by the applicant, the applicant has asserted that two flats are remaining unsold and require to be sold so that the partners can get the benefit thereof. In paragraph 4 the partners have alleged that it is necessary to file a civil suit for recovery of the balance amount of Rs. 4,96,000/- from Shri Dinesh Vaghela with interest at the rate of 21% per annum from the date the amount became due till the date of actual payment. There is no doubt that this situation presents a difference between the partners as to what has to be done about the two flats and the amount outstanding.

3. Mr. Dessai, the learned counsel for the respondents, has fairly accepted that in the reply to the notice the respondents have not stated that they would sell the said flats or recover the amount by filing a suit. Had that been so, there would certainly be no dispute having regard to the fact that the respondents have not agreed to the requests of the applicant. I am of the view that a dispute or difference between the partners with reference to a matter relating to the firm exists and that the respondents have failed to respond to the notice for

appointment of an Arbitrator. In these circumstances, I am of the view that it is expedient to appoint Mr. Alvaro Noronha Ferreira, Ex-District and Sessions Judge, Panaji, as Arbitrator to decide all differences and disputes existing between the partners as mentioned in the Notice, dated 2nd February 2002.

(S.A. BOBDE)
JUDGE.

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